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In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 740

THE STATE OF OHIO, *ex rel.* THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,

Relator-Appellant,

vs.

CITY OF EUCLID, OHIO,
and
M. A. SPINO,
Administrative Director of the City of Euclid,
and
KENNETH J. SIMS,
Mayor of the City of Euclid,

Respondents-Appellees.

JURISDICTIONAL STATEMENT.

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KENNETH J. SIMS,

Mayor of the City of Euclid,

Respondents-Appellees.

JURISDICTIONAL STATEMENT.

PRELIMINARY STATEMENT.

This is an appeal from a judgment of the Supreme Court of Ohio, announced on July 15, 1959, and adhered to after rehearing by an opinion issued on November 4, 1959, reversing a judgment of the Court of Appeals for Cuyahoga County, Ohio, in an action in mandamus originating in the Court of Appeals. The Relator-Appellant, The Cleveland Electric Illuminating Company sought and obtained from the Court of Appeals a writ of mandamus requiring the Respondents-Appellees, the City of Euclid, Ohio, and two of its officials, to issue to the Relator-Appellant a permit to cross six streets in said City with the

conductors of an overhead electric transmission line carrying energy at 132,000 volts (132 KV) to be constructed on private right-of-way through an industrial area adjacent to a railroad. The writ was sought (and granted in the Court of Appeals) on the ground that an ordinance prohibiting the issuance of the permit took Re[illegible]pellant's property without due process of law a[illegible]red its franchise contract.

This Statement is submitted by Relator-Appellant to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial Federal questions are presented, both as to substantive and procedural due process, which affect all classes of litigants, not alone corporate utilities.

OPINIONS BELOW.

The first opinion of the Supreme Court of Ohio and the dissenting opinion are officially reported at 169 Ohio St. 476, and at 159 N. E. 2d 756. The per curiam decision of the Supreme Court of Ohio to adhere to its former judgment after rehearing is officially reported at 170 Ohio St. 45, and at 162 N. E. 2d 125. In the Court of Appeals for Cuyahoga County, Ohio, the matter was referred to a Special Master Commissioner. The Master filed a Report of his findings of fact and of law which was not officially reported. The Report of the Master was adopted as its own findings of fact and conclusions of law by the Court of Appeals after a hearing on Relator-Appellant's motion to confirm and Respondents-Appellees' exceptions, and a writ of mandamus was ordered issued as prayed for. The order of the Court of Appeals has not been officially reported. Copies of the original opinion of the Supreme Court of Ohio, the opinion of the three dissenting judges of such Court and its per curiam opinion adhering to its former

judgment after rehearing, the order of the Court of Appeals for Cuyahoga County, Ohio, and the Report of the Special Master Commissioner, Professor Clinton DeWitt of Western Reserve Law School, are attached hereto as Appendix A to this Statement.

JURISDICTION.

The Village (now city) of Euclid, the Respondent-Appellee, by Ordinance No. 32, duly enacted in 1906, granted Relator-Appellant a franchise, without limitation as to time, to place its poles, wires and conduits and other fixtures for the transmission of electric energy by overhead or underground lines in the streets of the Village. Such ordinance was duly accepted by the Relator-Appellant according to its terms. Under Ohio law then (and now) in effect electric companies received their franchise to do business in municipalities by state statute but required the consent of the municipality to occupy its streets for such purpose. Ordinance No. 32 was such consent.

In 1956 the City passed Ordinance No. 288-1956, which prohibits the issuance of a permit for the crossing of city streets by any electric line which will serve, wholly or in part, persons not residents of Euclid. This ordinance was amended in 1957 by Ordinance No. 78-1957, which requires that all electric transmission lines carrying energy in excess of 33,000 volts be placed underground.

Thereafter Relator-Appellant applied under its franchise contract for a permit to cross six streets with the conductors of a transmission line to carry energy at 132,000 volts and to serve in substantial part consumers outside the city, to be built through the city on private right-of-way adjacent to a railroad. The permit was refused, whereupon this suit to require the permit to be issued was filed.